

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BERNICE BRANNAN, et al.,)	
)	DOCKET NO. UT-010988
Complainants,)	
)	
v.)	
)	
QWEST CORPORATION,)	
)	
Respondent.)	
.....))	
BERNICE BRANNAN, et al.,)	DOCKET NO. TG-010989
)	
Complainants,)	
)	
v.)	
)	
SANITARY SERVICE COMPANY, INC.,)	
)	
Respondent.)	
.....))	
BERNICE BRANNAN, et al.,)	DOCKET NO. UE-010990
)	
Complainants,)	
)	
v.)	
)	
PUGET SOUND ENERGY, INC.,)	
)	
Respondent.)	
.....))	
TERRY McNEIL, et al.,)	DOCKET NO. UE-010995
)	
Complainants,)	
)	
v.)	
)	
PUGET SOUND ENERGY, INC.,)	
)	
Respondent.)	
.....))	
TERRY McNEIL, et al.,)	DOCKET NO. UT-010996
)	
Complainants,)	ORDER OF CONSOLIDATION AND
)	NOTICE OF PREHEARING
v.)	CONFERENCE
)	(October 22, 2001)
VERIZON NORTHWEST, INC.,)	
)	
Respondent.)	
.....))	

- 1 On July 6, 2001, in Docket No. UT-010988, Bernice Brannan and twenty-six other named individuals filed with the Commission a complaint against Qwest Corporation. The complainants request that the Commission remove the Lummi Business Utility tax from the tariff of Qwest Corporation to the extent the tax is passed through to non-tribal members located on fee land within the Lummi Reservation.
- 2 On July 6, 2001, in Docket No. TG-010989, Bernice Brannan and twenty-six other named individuals filed with the Commission a complaint against Sanitary Service Company, Inc. The complainants request that the Commission remove the Lummi Business Utility tax from the tariff of Sanitary Service Company, Inc., to the extent the tax is passed through to non-tribal members located on fee land within the Lummi Reservation.
- 3 On July 6, 2001, in Docket No. UE-010990, Bernice Brannan and twenty-six other named individuals filed with the Commission a complaint against Puget Sound Energy, Inc. The complainants request that the Commission remove the Lummi Business Utility tax from the tariff of Puget Sound Energy, Inc., to the extent the tax is passed through to non-tribal members located on fee land within the Lummi Reservation.
- 4 On July 9, 2001, in Docket No. UE-010995, Terry McNeil and twenty-seven other named individuals filed with the Commission a complaint against Puget Sound Energy, Inc. The complainants request that the Commission remove the Swinomish Utility Business Activity tax from the tariff of Puget Sound Energy, Inc., to the extent the tax is passed through to non-tribal members located on fee land within the Swinomish Reservation.
- 5 On July 9, 2001, in Docket No. UT-010996, Terry McNeil and twenty-seven other named individuals filed with the Commission a complaint against Verizon Northwest, Inc. The complainants request that the Commission remove the Swinomish Utility Business Activity tax from the tariff of Verizon Northwest, Inc., to the extent the tax is passed through to non-tribal members located on fee land within the Swinomish Reservation.
- 6 The complaints are available for inspection at the Commission's office located at Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. It is appropriate that the matters raised in the pleadings be brought for hearing before the Commission.
- 7 The foregoing complaints involve common questions of fact and law. Accordingly, the Commission has determined that they should be consolidated for hearing and determination. Pursuant to WAC 480-09-610, the disposition of the consolidation of these proceedings has been referred to the Administrative Law Judge assigned to these proceedings.

ORDER OF CONSOLIDATION

- 8 IT IS HEREBY ORDERED That each of the dockets listed above be and the same are consolidated for hearing and determination, with the Commission reserving the right to hold such separate hearings and to issue separate orders in the individual dockets as it may deem appropriate.

NOTICE OF PREHEARING CONFERENCE
(October 22, 2001)

- 9 Hearing in this matter is being held pursuant to Part IV of chapter 34.05 RCW pertaining to adjudicative proceedings, including but not limited to RCW 34.05.413, RCW 34.05.431, RCW 34.05.440, RCW 34.05.443, RCW 34.05.449, RCW 34.05.452, and RCW 34.05.455. The Commission may have jurisdiction over this matter under Title 80 RCW, in connection with its legal authority to regulate the rates, services, and practices of telecommunications companies and electric utilities providing service within the state of Washington, and under Title 81 RCW having legal authority to regulate the rates, services, and practices of solid waste collection companies pursuant to chapter 81.77 RCW. The Commission's jurisdiction to hear the matter raised by Complainants, however, has been challenged by Verizon Northwest, Inc., Qwest Corporation, and Sanitary Service Company, Inc., in their Answers. The complainants cite *Atkinson Trading Company, Inc. v. Shirley, et al.*, 532 U.S. ___ (2001) and *Big Horn Electric Coop., Inc. v. Adams*, 219 F.3d 944 (9th Cir. 2000) in support of the allegations contained in their complaints. The statutes and rules involved may include those within chapter 80.04 RCW, chapter 80.28 RCW, chapter 80.36 RCW, chapter 81.04 RCW, chapter 81.28 RCW, chapter 480-09 WAC, chapter 480-70 WAC, chapter 480-100 WAC, and chapter 480-120 WAC. The issues involved are generally stated above and more specifically contained in the complaints.
- 10 **NOTICE IS GIVEN That a prehearing conference in this matter will be held on Monday, October 22, 2001, at 2:00 p.m., in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.**
- 11 **To assist the Commission in addressing these complaints, all parties are required to submit by Monday, September 17, 2001, a legal memorandum in support of their position as to whether the Commission has jurisdiction over these complaints. Responses to the parties' legal memoranda will be due Monday, October 1, 2001.**
- 12 The purpose of the prehearing conference is to consider formulating the issues in the proceeding, and to determine other matters to aid in its disposition, as specified in WAC 480-09-460. **Petitions to intervene must be made in writing prior to the prehearing conference.** The time and place for any evidentiary hearing will be set at the prehearing conference or by later written notice. Appearances will be taken.
- 13 If any party or witness needs an interpreter or other assistance, please fill out the form attached to this notice and return it to the Commission.
- 14 **NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE**

WITH RCW 34.05.440. THE PARTIES ARE FURTHER ADVISED THAT THE SANCTION PROVISIONS OF WAC 480-09-700(4) ARE SPECIFICALLY INVOKED.

15 The names and mailing addresses of all parties and their known representatives are as follows:

Complainant: Bernice Brannan, et al.
4145 Patos Drive
Ferndale, WA 98248
(360) 380-6313

Representative: Pro Se

Complainant: Terry McNeil, et al.
16750 Warren Street
LaConner, WA 98257-8939

Representative: Pro Se

Respondent: Qwest Corporation
1600 Seventh Avenue
Seattle, WA 98191

Representative: Lisa Anderl
Attorney at Law
Qwest Corporation
1600 Seventh Avenue, Room 3206
Seattle, WA 98191
(206) 345-1574

Respondent: Sanitary Service Company, Inc.
P. O. Box 1702
Bellingham, WA 98227

Representative: Edward J. Nikula
Chief Financial Officer
Sanitary Service Company, Inc.
1001 Roeder Avenue
Bellingham, WA 98225
(360) 734-3490

Respondent: Puget Sound Energy, Inc.
P. O. Box 97034
Bellevue, WA 98009-9734

Representatives: Steven C. Marshall
William R. Maurer
Perkins Coie LLP
One Bellevue enter
411 108th Avenue N.E., Suite 1800
Bellevue, WA 98004
(425) 453-6980

Respondent: Verizon Northwest, Inc.
1800 41st Street
Everett, WA 98201

Representative: Charles H. Carrathers III
Vice President and General Counsel
Verizon Northwest, Inc.
P. O. Box 152092 - HQE02H20
Irving, TX 75015-2092
(972) 718-2415

Public Counsel: Simon ffitich
Office of Attorney General
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

- 16 Karen Caillé has been designated as the Administrative Law Judge from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, WA 98504-7250, and will preside at the prehearing conference.
- 17 The Public Counsel section of the Office of the Attorney General has been designated by the Attorney General to represent the public. The address of the Commission, shown below, may be used for inquires of Public Counsel, or Public Counsel may be contacted directly by writing or calling the address or telephone number listed below.
- 18 Notice of any other procedural phase will be given in writing or on the record as the Commission may deem appropriate during the course of this proceeding.

Dated at Olympia, Washington, and effective this _____ day of August 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ
Administrative Law Judge

Inquires may be addressed to:

Executive Secretary
Washington Utilities and
Transportation Commission
Chandler Plaza Building
1300 S. Evergreen Park Drive S.W.
P. O. Box 47250
Olympia, WA 98504-7250
(360) 664-1160

or Public Counsel Section
Office of Attorney General
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744